IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2007

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THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No.2037 of 2007 &
M.P.Nos.1 & 2 of 2007

The Correspondent
Britannia Higher Secondary School
Padi, Chennai-600 050. . . Petitioners

Vs

1.The State of Tamil Nadu,
Rep.by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
2.The Director of School Education,
College Road,
Chennai-600 006.
3.The Chief Educational Officer,
Thiruvallur,
Thiruvallur District.
4.The District Educational Officer,
Ponneri, Thiruvallur,
Thiruvallur District - 601 204. .. Respondents

Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the second respondent Director of School Education in Na.Ka.No.30687/D1(2)/04 dated 26.10.2004 and the consequential proceedings of the fourth respondent District Educational Officer in Na.Ka.No.3310/Aa3/2005 dated 29.11.2006 quash the same in so far as the petitioner-school is concerned and further direct the respondents herein to approve the appointment of I.Beaula Charlin as the Middle Grade Graduate teacher (English) in the petitioner-school w.e.f. 01.07.2005 with salary and all other attendant allowances and benefits.

For Petitioner : Mr.Isaac Mohanlal

For Respondents : Mr.P.Gopiraja
Government Advocate

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ORDER

The issue involved in this case is covered by the judgment of the Madurai Bench of Madras High Court reported in 2006 (5) CTC 504 (THE CORPORATE MANAGER, CSI CORPORATE SCHOOLS V. THE STATE OF TAMIL NADU).

2.The impugned order in the present case refers about the proceedings of the second respondent namely the Director of School Education dated 26.10.2004 wherein it was stated that subject roster must be maintained for the purpose of appointment of Middle Grade Graduate Teacher. While dealing with the validity of the proceedings of the second respondent namely the Director of School Education passed in Na.Ka.No.30687/D1(2)/04 dated 26.10.2004, this Court in the above said judgment while quashing the said proceedings of the Director of the School Education has held that the said requirement is in violation of the provisions of the Tamil Nadu Recognised Private School (Regulation) Act, 1973 and G.O.Ms.No.125 School Education (X2) Department dated 12.11.2003.

3.It is also relevant to point out that this Court in the above said judgment has held that the above said Act and Order did not contemplate any where that the schools must have subject roster in respect of appointment of Middle Grade Graduate Teacher.

4.Further the said order of the second respondent which is executive in nature, cannot go against the statutory provision made thereunder as it has been laid down by the Honourable Supreme Court in the decision in B.N.NAGARAJAN v. STATE OF KARNATAKA, 1979 (4) SCC 507, which was followed in the decision in V.SREENIVASA REDDY AND OTHERS v. GOVERNMENT OF A.P. AND OTHERS, 1995 Supp (1) SCC 572.

5.Further it is unfortunate for the second respondent to take a decision that the said judgment reported in 2006 (5) CTC 504 is applicable only in respect of the CSI Schools and not in respect of the present writ petitioner's school. The learned Government Advocate would fairly submit that the order passed by this Court reported in the above said judgment is applicable to all schools similarly situated since the dictum laid down in respect of the appointment of Middle School Graduate Teachers, whether it is a High School or Higher Secondary School, there was no question of maintenance of subject roster. In view of the same, there is absolutely no reason for the second respondent to reject the proposal for approval of appointment of I.Beaula Charlin as Middle Grade Graduate Teacher in the vacancy caused due to the retirement of Mabel

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Vijayakumari who retired on 31.05.2005 and the appointment of the said I. Beaula Charlin has to be approved irrespective of the application of subject roster. In view of the same, the writ petition stands allowed with a direction to the respondents to consider the proposal of the petitioner for approval of appointment of I.Beaula Charlin as the Middle Grade Graduate Teacher from the date of her appointment and pass orders if there are no other legal impediment. Such order shall be passed within a period of 12 weeks from the date of receipt of a copy of this order. Consequently, connected M.Ps. are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

jikr

To

1.The Secretary to Government
  Department of School Education,
  Fort St. George,
  Chennai-600 009.
2.The Director of School Education,
  College Road,
  Chennai-600 006.
3.The Chief Educational Officer,
  Thiruvallur,
  Thiruvallur District.
4.The District Educational Officer,
  Ponneri, Thiruvallur,
  Thiruvallur District - 601 204

1 cc To Mr.Isaac Mohanlal, Advocate, SR.7027.

W.P.No.2037 of 2007

TEJ(CO)
RVL 09.02.2007

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